



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2018-0225]**

**RIN 1625-AA08**

### **Special Local Regulation; Breton Bay, Leonardtown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary special local regulations for certain waters of the Breton Bay. This action is necessary to provide for the safety of life on these navigable waters of Breton Bay, at Leonardtown, MD, on October 6, 2018, and October 7, 2018. This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

**DATES:** This rule is effective from 7:30 a.m. on October 6, 2018 to 5:30 p.m. on October 7, 2018. It will be enforced from 7:30 a.m. to 5:30 p.m. on each of those days.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0225 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST2 Dane Grulkey, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2570, email Dane.M.Grulkey@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On January 22, 2018, the Southern Maryland Boat Club notified the Coast Guard that it will be conducting the club's fall regatta from 8 a.m. to 5 p.m. on October 6, 2018, and October 7, 2018. The regatta consists of approximately 40 boats participating in an exhibition of vintage outboard racing V-hull boats. The regatta is not a competition but rather a demonstration of the vintage race craft. Vessels may reach speeds of 90 mph. Hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event.

In response, on August 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Special Local Regulation; Breton Bay, Leonardtown, MD" (83 FR 41032). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power boat racing event. During the comment period that ended September 17, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the regatta.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the regatta will be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of Breton Bay at Leonardtown, MD. The purpose of this rule is to protect marine event participants, spectators and transiting vessels on specified waters of Breton Bay before, during, and after the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published August 17, 2018. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary special local regulation to be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018 and from 7:30 a.m. to 5:30 p.m. on October 7, 2018. The regulated area covers all navigable waters within Breton Bay, from shoreline to shoreline, within an area bound by a line drawn along latitude 38°16'43" N.; and bounded to the west by a line drawn along longitude 076°38'29.5" W., located at Leonardtown, MD. This rule provides additional information about designated areas within the

regulated area, including “Race Area”, “Buffer Zone” and “Spectator Area(s).” The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the regatta, scheduled to occur between 8 a.m. to 5 p.m. each day of the event. Except for participants, no vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard Patrol Commander.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of Breton Bay during October 6–7, 2018, for a total of 20 enforcement-hours. The Coast Guard will issue a Broadcast Notice to Mariners via marine band radio VHF-FM channel 16 about the status

of the regulated area. Moreover, the rule will allow vessel operators to request permission to enter the regulated area for the purpose of safely transiting the regulated area if deemed safe to do so by the Coast Guard Patrol Commander.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation to be enforced a total of 20 hours over two days. This category of marine event water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Memorandum for Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.501T05-0225 to read as follows:

#### **§ 100.501T05-0225 Special Local Regulation; Breton Bay, Leonardtown, MD.**

(a) Definitions—(1) Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or a Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.



(4) Spectator means any person or vessel not registered with the event sponsor as a participant or an official patrol vessel.

(5) Participant means any person or vessel participating in the Southern Maryland Boat Club Fall Regatta event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(b) Regulated area. All coordinates reference Datum NAD 1983.

(1) Coordinates. The following location is a regulated area: all navigable waters within Breton Bay, MD, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N. and bounded to the west by a line drawn along longitude 076°38'29.5" W., located at Leonardtown, MD.

(2) Race area. Located within the waters of Breton Bay, MD in an area bound by a line commencing at position latitude 38°17'07.2" N., longitude 076°38'17.3" W., thence southeast to latitude 38°16'55.3" N., longitude 076°37'48" W., thence southwest to latitude 38°16'50.1" N., longitude 076°37'51.3" W., thence northwest to latitude 38°17'01.9" N., longitude 076°38'21" W., thence northeast to point of origin.

(3) Buffer zone. Located within the waters of Breton Bay, MD. The area surrounds the entire race area described in the preceding paragraph of this section. This area is rectangular in shape and provides a buffer of approximately 125 yards around the perimeter of the race area. The area is bounded by a line commencing at position latitude 38°17'12" N., longitude 076°38'19.6" W.; thence southeast to latitude 38°16'57" N., longitude 076°37'40.5" W.; thence southwest to latitude 38°16'44.8" N., longitude

076°37'48.2" W.; thence northwest to latitude 38°17'00.2" N., longitude 076°38'27.8" W.; thence northeast to point of origin.

(4) Spectator areas—(i) *Spectator area A*. The area is bounded by a line commencing at position latitude 38°16'52.1" N., longitude 076°38'14.2" W.; thence northeast to latitude 38°16'54" N., longitude 076°38'12.5" W.; thence southeast to latitude 38°16'48.6" N., longitude 076°37'59.3" W.; thence south to latitude 38°16'47.4" N., longitude 076°37'59.3" W.; thence northwest along the shoreline to point of origin.

(ii) *Spectator area B*. The area is bounded by a line commencing at position latitude 38°16'59.1" N., longitude 076°37'45.6" W.; thence southeast to latitude 38°16'57.1" N., longitude 076°37'40.2" W.; thence southwest to latitude 38°16'54.3" N., longitude 076°37'41.9" W.; thence southeast to latitude 38°16'51.8" N., longitude 076°37'36.4" W.; thence northeast to latitude 38°16'55.2" N., longitude 076°37'34.2" W.; thence northwest to latitude 38°16'59.2" N., longitude 076°37'37.2" W.; thence west to latitude 38°17'01.7" N., longitude 076°37'43.7" W.; thence south to point of origin.

(iii) *Spectator area C*. The area is bounded by a line commencing at position latitude 38°16'47.2" N., longitude 076°37'54.8" W.; thence south to latitude 38°16'43.3" N., longitude 076°37'55.2" W.; thence east to latitude 38°16'43.2" N., longitude 076°37'47.8" W.; thence north to latitude 38°16'44.7" N., longitude 076°37'48.5" W.; thence northwest to point of origin.

(c) Special local regulations. (1) The Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately

comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant, at any time it is deemed necessary for the protection of life or property.

(4) The Race Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a Race Area within the regulated area defined in paragraph (b)(2) of this section. The actual placement of the race course will be determined by the marine event sponsor but must be located within the designated boundaries of the Race Area. Only participants and official patrol vessels are allowed to enter the Race Area.

(5) The Buffer Zone is an area that surrounds the perimeter of the Race Area within the regulated area defined in paragraph (b)(3) of this section. The purpose of a Buffer Zone is to minimize potential collision conflicts with participants and spectators or nearby transiting vessels. This area provides separation between the Race Area and Spectator Area or other vessels that are operating in the vicinity of the regulated area.

defined in paragraph (b)(1) of this section. Only participants and official patrol vessels are allowed to enter the Buffer Zone.

(6) The Spectator Area is an area described by a line bounded by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined in paragraph (b)(4) of this section. Spectators are only allowed inside the regulated area if they remain within the Spectator Area. All spectator vessels shall be anchored or operate at a no-wake speed while transiting within the Spectator Area. Spectators may contact the Coast Guard Patrol Commander to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, spectators must enter the Spectator Area or pass directly through the regulated area as instructed at safe speed and without loitering.

(7) The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. The Captain of the Port Maryland-National Capital Region can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(8) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio.

(d) Enforcement periods. This section will be enforced from 7:30 a.m. to 5:30 p.m. on October 6, 2018, and from 7:30 a.m. to 5:30 p.m. on October 7, 2018.

Dated: September 26, 2018.

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.

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